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Date:
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Legend:

Decedent =
Spouse =
Attorney =
Trust =

Date 1 =
Date 2 =
Date 3 =

Dear :

This letter is in response to a letter dated October 18, 2007, and subsequent correspondence, from your authorized representative requesting rulings under §§ 2056(b)(7), 2652(a)(3), and 2632 of the Internal Revenue Code.

The facts submitted and the representations made are as follows. Decedent died on Date 1. Decedent's Will provides that his residuary estate is to be distributed to Trust, an intervivos revocable trust that became irrevocable upon his death.

Article IV, paragraph A of Trust provides for a Marital Bequest equal in value to the smallest pecuniary amount necessary to produce the least federal estate tax payable as a result of Decedent's death. The Marital Bequest is to be divided between two trusts. One trust (hereinafter referred to as the GST Exempt Marital Trust) is to be funded with an amount equal to Decedent's GST exemption available at death, less the smallest amount of that exemption necessary to exempt the family trust (established under Article V of Trust) from GST tax. The other trust (hereinafter referred to as the GST Non-exempt Marital Trust) is to be funded with the balance of the Marital Bequest.

Article IV, paragraph A further provides that the trustee is to distribute to Spouse the entire net income of the GST Exempt and Non-exempt Marital Trusts at least quarter-

annually and trust corpus necessary to provide for her health and support in reasonable comfort. Upon Spouse's death, trust assets are to be distributed pursuant to Spouse's testamentary limited power to appoint. Generally, assets not appointed are to be held in further trust for Decedent's children and distributed to Decedent's grandchildren.

Article IV, paragraph E authorizes the trustee to make the qualified terminable interest property (QTIP) election under § 2056(b)(7) for all or a portion of the GST Exempt and Non-exempt Marital Trusts.

Article V provides that the residue of the estate is to pass to the family trust. The trustee is to distribute net income and principal of the family trust to Spouse necessary to provide for her health and support in reasonable comfort. Undistributed income is to be added to principal. Upon Spouse's death, trust assets are to be distributed pursuant to Spouse's testamentary limited power to appoint. Generally, assets not appointed are to be held in further trust for Decedent's children and distributed to Decedent's grandchildren.

Spouse, as executrix of Decedent's estate, retained Attorney to prepare the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for Decedent's estate. The due date of the Form 706, including extensions granted, was Date 2. Attorney filed the Form 706 with the Internal Revenue Service on or before Date 3, which date was after Date 2.

On Schedule M of the Form 706, as filed, the executrix made the QTIP election under § 2056(b)(7) with respect to the GST Exempt and GST Non-exempt Marital Trusts, and made the reverse QTIP election under § 2652(a)(3) with respect to GST Exempt Marital Trust. It is represented that the GST Non-exempt Marital Trust was not funded because the estate did not contain sufficient probate assets to fund the trust. Schedule M contains a statement that the GST Non-exempt Marital Trust would not be funded. On Schedule R of the Form 706, as filed, the executrix allocated Decedent's GST exemption available at death to the family trust and the GST Exempt Marital Trust.

Executrix is requesting rulings that: (1) the QTIP election and the reverse QTIP election made on the Form 706, as filed, are effective; and that (2) Decedent's available GST exemption at death was allocated to the family trust and the GST Exempt Marital Trust.

Law and Analysis:

Section 2001(a) imposes a tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States.

Section 2044(a) provides that the value of the gross estate includes the value of any property to which § 2044 applies in which the decedent had a qualifying income interest for life. Under § 2044(b), § 2044 applies to any property if a deduction was allowed with

respect to the transfer of such property to the decedent under § 2056 by reason of § 2056(b)(7), and § 2519 (relating to dispositions of certain life estates) did not apply with respect to a disposition by the decedent of part or all of such property.

Section 2056(a) provides that, for purposes of the tax imposed by § 2001, the value of the taxable estate shall, except as limited by § 2056(b), be determined by deducting from the value of the gross estate an amount equal to the value of any interest in property that passes or has passed from the decedent to the surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

Section 2056(b)(1) provides the general rule that no deduction shall be allowed for an interest passing to the surviving spouse if, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, the interest will terminate or fail.

Section 2056(b)(7)(A) provides that, in the case of qualified terminable interest property, the entire property shall be treated as passing to the surviving spouse for purposes of § 2056(a), and no part of the property shall be treated as passing to any person other than the surviving spouse for purposes of § 2056(b)(1)(A).

Section 2056(b)(7)(B)(i) defines "qualified terminable interest property" as property: (1) that passes from the decedent, (2) in which the surviving spouse has a qualifying income interest for life, and (3) to which an election under § 2056(b)(7)(B)(v) applies.

Section 2056(b)(7)(B)(ii) provides that the surviving spouse has a qualifying income interest for life if: (1) the surviving spouse is entitled to all of the income from the property, payable annually or at more frequent intervals, or has a usufruct interest for life in the property, and (2) no person has a power to appoint any part of the property to any person other than the surviving spouse.

Section 2056(b)(7)(B)(v) provides that an election under § 2056(b)(7) with respect to any property is made by the executor on the return of tax imposed by § 2001. Such an election, once made, is irrevocable.

Section 20.2056(b)-7(b)(4)(i) of the Estate Tax Regulations provides that, in general, the election referred to in § 2056(b)(7)(B)(i)(III) and (v) is made on the return of tax imposed by § 2001 (or § 2101). For purposes of this paragraph, the term "return of tax imposed by § 2001" means the last estate tax return filed by the executor on or before the due date of the return, including extensions or, if a timely return is not filed, the first estate tax return filed by the executor after the due date. Under § 2044, property subject to a QTIP election for which a deduction was allowed under § 2056(b)(7) is subject to inclusion in the gross estate of the surviving spouse on the spouse's subsequent death.

Section 2601 imposes a tax on every generation-skipping transfer, made by a transferor

to a skip person. Section 2602 provides that the amount of the tax is the taxable amount multiplied by the applicable rate. Section 2641(a) defines "applicable rate" as the product of the maximum Federal estate tax rate and the inclusion ratio with respect to the transfer.

Under section 2642(a)(1), in general, the inclusion ratio with respect to any property transferred in a generation-skipping transfer is the excess (if any) of 1 over the applicable fraction determined for the trust from which such transfer is made. Section 2642(a)(2) provides generally that the applicable fraction is a fraction (A) the numerator of which is the amount of the GST exemption allocated to the trust under section 2631(a), and (B) the denominator of which is the value of the property transferred to the trust.

Under §§ 2631(a) and (c) for purposes of determining the inclusion ratio, every individual is allowed a GST exemption amount that may be allocated by such individual (or by his executor) to any property with respect to which such individual is the transferor. The GST exemption amount for any calendar year is equal to the applicable exclusion amount under § 2010(c) for such year. Section 2631(b) provides that once an allocation of GST exemption is made, it is irrevocable.

Section 2632(a) provides that the allocation of the GST exemption may be made at any time on or before the date prescribed for filing the individual's estate tax return (including extensions).

Section 2632(e)(1) provides that any portion of an individual's GST exemption which has not been allocated within the time prescribed by § 2632(a) shall be deemed to be allocated as follows: (A) first, to property which is the subject of a direct skip occurring at such individual's death, and (B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or taxable termination might occur at or after such individual's death.

Section 26.2632-1(d)(1) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of decedent's unused GST exemption by the executor of the decedent's estate is made on the Form 706, filed on or before the date prescribed for filing the return by § 6075(a) (including any extensions actually granted).

Section 26.2632-1(d)(2) provides that a decedent's unused GST exemption is automatically allocated on the due date for filing Form 706 to the extent not otherwise allocated by the decedent's executor on or before that date. The automatic allocation occurs whether or not a return is actually required to be filed. Unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)), on the basis of the value of the property as finally determined for purposes of chapter 11 (chapter 11 value), first to direct skips treated as occurring at the transferor's death. The balance, if any, of unused GST exemption is allocated pro rata (subject to the rules of § 26.2642-2(b)) on

the basis of the chapter 11 value of the nonexempt portion of the trust property (or in the case of trusts that are not included in the gross estate, on the basis of the date of death value of the trust) to trusts with respect to which a taxable termination may occur or from which a taxable distribution may be made. The automatic allocation of GST exemption is irrevocable, and an allocation made by the executor after the automatic allocation is made is ineffective. No automatic allocation of GST exemption is made to a trust that will have a new transferor with respect to the entire trust prior to the occurrence of any GST with respect to the trust.

Section 2652(a)(1) provides that for purposes of chapter 13, the term "transferor" means, in the case of property subject to the tax imposed by chapter 11, the decedent. An individual shall be treated as transferring any property with respect to which such individual is the transferor.

Section 2652(a)(3) provides that in the case of any trust with respect to which a deduction is allowed to the decedent under § 2056(b)(7), the estate of the decedent may elect to treat all of the property in the trust, for purposes of chapter 13, as if the QTIP election had not been made (reverse QTIP election).

Section 26.2652-2(a) provides that a reverse QTIP election is not effective unless it is made with respect to all of the property in the trust to which the QTIP election applies. Section 26.2652-2(b) provides that a reverse QTIP election is made on the return on which the QTIP election is made.

Ruling 1:

In this case, the QTIP election was made on a late filed Form 706, which was the first return filed after the due date of the return. Accordingly, based upon the facts submitted and the representations made, we conclude that pursuant to § 20.2056(b)-7(b)(4)(i), the QTIP election made on the Form 706, as filed, is effective.

With respect to the reverse QTIP election, § 26.2652-2(b) provides that a reverse QTIP election is made on the return on which the QTIP election is made. Accordingly, based on the facts submitted and the representations made, we conclude that since an effective QTIP election was made on the Form 706, as filed, the reverse QTIP election made on that form is also effective.

Ruling 2:

In this case, since the Form 706 was not timely filed on Date 2, pursuant to §2632(e) and § 26.2632-1(d)(2), Decedent's available GST exemption at death was automatically allocated to trusts for which Decedent is considered the transferor and from which a GST event may occur. As discussed above, in accordance with the formula prescribed in Article IV, paragraph A of Trust no assets passed to the GST Non-exempt Marital

Trust. Further, as a result of the effective reverse QTIP election with respect to the GST Exempt Marital Trust, Decedent is treated as the transferor of that trust for GST tax purposes. Accordingly, based upon the facts submitted and the representations made, we conclude that under §§ 2632(e) and 26.2632-1(d)(2), Decedent's available GST exemption at death was automatically allocated to the family trust and the GST Exempt Marital Trust.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

George L. Masnik

George L. Masnik
Branch Chief, Branch 4
(Passthroughs & Special Industries)

Enclosures: Copy for § 6110 purposes

cc: